

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TEMUJIN KENSU, INDIVIDUALLY,  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,

Case No. 2:18-cv-11086-SFC-PTM

*Plaintiffs,*

Hon. Sean F. Cox  
Mag. Judge Patricia T. Morris

v.

JPAY INC.

*Defendant.*

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**PLAINTIFF'S MOTION FOR LEAVE TO FILE A REPLY TO  
DEFENDANT'S RESPONSE REGARDING OBJECTIONS TO  
REPORT AND RECOMMENDATION**

Plaintiff Temujin Kensu and the Class, by and through their counsel, EXCOLO LAW, PLLC, move to file a short reply to Defendant's Response to Plaintiff's Objections to Magistrate Judge Patricia T. Morris's Report and Recommendation Entered October 22, 2018. (ECF No. 25). Plaintiff respectfully requests leave to file the short reply to address new law and facts contained in their responsive motion.

Plaintiff respectfully requests permission to address these matters in a short reply brief that will be no more than ten pages, which will be filed upon receiving permission from the Court.

For the reasons stated in the attached brief, Plaintiff respectfully requests leave to file a short reply of no more than ten pages to the issues addressed above.

Dated: November 20, 2018

Respectfully Submitted,

EXCOLO LAW, PLLC  
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**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE A  
REPLY TO DEFENDANT'S RESPONSE REGARDING OBJECTIONS TO  
REPORT AND RECOMMENDATION**

**CONTROLLING OR MOST APPROPRIATE AUTHORITY**

*Wilcoxson v. Bros.*, No. 15-13308, 2016 WL 4119802 (E.D. Mich Aug. 3, 2016)

*Seay v. TVA*, 339 F.3d 454 (6th Cir. 2003)

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## **INTRODUCTION**

Plaintiff Temujin Kensu and the Class, by and through their counsel, EXCOLO LAW, PLLC, move to file a short reply to Defendant's Response to Plaintiff's Objections to Magistrate Judge Patricia T. Morris's Report and Recommendation Entered October 22, 2018. (ECF No. 25). Plaintiff respectfully requests leave to file the short reply to address new law and facts contained in their responsive motion.

## **ARGUMENT**

Plaintiff seeks leave to file a reply to arguments raised for the first time in Defendant JPay's Response to Plaintiff's Objections to Magistrate Judge Patricia T. Morris's Report and Recommendation Entered October 22, 2018. (ECF No. 25). Pursuant to Local Rule 7.1(a), Plaintiff sought concurrence in this Motion from Counsel for JPay, but was unable to obtain concurrence.

Although neither the federal rules nor the Eastern District of Michigan's Local Rules provide for replies to responses to objections to a Magistrate's report and recommendation as a matter of course, surreplies "are often permitted where 'new submissions and/or arguments are included in the reply brief.'" *Wilcoxson v. Bros.*, No. 15-13308, 2016 WL 4119802, at \*3 (E.D. Mich Aug. 3, 2016) (quoting *Seay v. TVA*, 339 F.3d 454, 481 (6th Cir. 2003)); *see also Kentucky v. Marathon Petroleum Co. LP*, No. 3:15-CV-354-DJH, 2017 WL 4799816, at \*2 (W.D. Ky. Oct. 24, 2017).

Here, like a surreply, it is within the Court's discretion to grant Plaintiff permission to address new submissions and arguments that were raised in Defendant's responsive brief by allowing Plaintiff to submit a short reply brief that will be no more than ten pages.

### **CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests leave to file a short reply of no more than ten pages to the issues addressed above.

Dated: November 20, 2018

Respectfully Submitted,

EXCOLO LAW, PLLC

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*Attorneys for Plaintiff and the Class*

### **CERTIFICATE OF SERVICE**

Undersigned hereby states that on November 20, 2018, he caused the foregoing document to be filed electronically with the United States District Court and that a copy of said document was sent to all counsel of record through the CM/ECF system.

/s/ Keith Altman